

Serial No.: 10/675,412

Docket No.: KCC-16,247.3

Claim Rejections - 35 U.S.C. §112

The rejection of Claims 1-54 under 35 U.S.C. §112, first paragraph, is respectfully traversed. Applicants have amended the Specification as discussed above, thereby providing support for the term "intermixed."

Objection to the Amendment

The Office Action, at page 5, apparently objects to the prior Amendment as introducing new matter. This "new matter objection" appears to be formally embodied in the rejection under 35 U.S.C. §112, first paragraph, but is being additionally addressed here to ensure a complete reply. The new matter is identified as the term "intermixed" that was added to the claims. The Office Action states no support for this term is found in the particular paragraphs identified by Applicants.

There is support in Applicants' original disclosure for the claim limitation "a plurality of superabsorbent material particles or fibers intermixed with the plurality of water-insoluble fibers." The Office Action bases its conclusion of "new matter" on not being able to find the term "intermixed" in the portions noted by Applicants. However, the law and the Patent Office rules are quite clear that an added claim limitation is not new matter simply because a specific term used in that limitation does not appear in the original disclosure.

KCC-2137-CIP1-DIV

4

MDS/I

Serial No.: 10/675,412

Docket No.: KCC-16,247.3

Finding the exact term in the disclosure is not the standard for determining compliance with the written description requirement or determining new matter. MPEP 2163.02 states:

An objective standard for determining compliance with the written description requirement is, "does the description clearly allow persons of ordinary skill in the art to recognize that he or she invented what is claimed." *In re Gosteli*, 872 F.2d 1008, 1012, 10 USPQ2d 1614, 1618 (Fed. Cir. 1989). Under *Vas-Cath, Inc. v. Mahurkar*, 935 F.2d 1555, 1563-64, 19 USPQ2d 1111, 1117 (Fed. Cir. 1991), to satisfy the written description requirement, an applicant must convey with reasonable clarity to those skilled in the art that, as of the filing date sought, he or she was in possession of the invention, and that the invention, in that context, is whatever is now claimed. The test for sufficiency of support in a parent application is whether the disclosure of the application relied upon "reasonably conveys to the artisan that the inventor had possession at that time of the later claimed subject matter." *Ralston Purina Co. v. Far-Mar-Co., Inc.*, 772 F.2d 1570, 1575, 227 USPQ 177, 179 (Fed. Cir. 1985) (quoting *In re Kaslow*, 707 F.2d 1366, 1375, 217 USPQ 1089, 1096 (Fed. Cir. 1983)).

MPEP 2163.02 further states that "[t]he subject matter of the claim need not be described literally (i.e., using the same terms or *in haec verba*)."

The original disclosure supports the claim limitation "a plurality of superabsorbent material particles or fibers intermixed with the plurality of water-insoluble fibers," despite the absence of the specific term "intermixed" in the original disclosure.¹ Applicants previously referred to the third paragraph on page 14 as

¹ The term "intermixed" has been added to the Specification in response to the objection to the Specification. These arguments as to why this term can be used in the claims also apply to why the term can be properly added to the Specification.

Serial No.: 10/675,412

Docket No.: KCC-16,247.3

providing support for the added limitation. In this paragraph, the Specification discloses absorbent composites that are

... made by combining superabsorbent particles and matrix fibers into an airforming former unit to *mix* and lay down a web of *intermingled* superabsorbent particles and matrix fibers. The web of intermingled superabsorbent particles and matrix fibers is formed directly onto a porous sheet of tissue. (emphasis added).

In this section, the disclosure conveys to one skilled in the art that the superabsorbent material and the fiber matrix are mixed and intermingled during forming and in the final product. One skilled in the art would recognize that Applicants had possession of the claimed invention, as “intermixed” means “mixed together” and the original disclosure teaches making composites by mixing together the water-insoluble fibers and superabsorbent materials. Also, the term “intermixed” finds support in the term “intermingled” as “[m]ere rephrasing of a passage does not constitute new matter” (MPEP 2163.07).

Further support for the intermixed superabsorbent particles or fibers and the matrix fibers can be found in the Examples, such as at page 19, first paragraph. Here, the absorbent composite is formed by mixing the superabsorbent material with the water-insoluble fibers in water to form a slurry, and pouring the slurry into a pan and freeze-drying. Again, one skilled in the art would recognize that Applicants had possession of the claimed invention, as “intermixed” means “mixed together” and the

KCC-2137-CIP1-DIV

6

MDS/I

Serial No.: 10/675,412

Docket No.: KCC-16,247.3

original disclosure teaches making composites by mixing together the water-insoluble fibers and superabsorbent material in the slurry.

For at least the above reasons, Applicants respectfully assert the previously added limitation "a plurality of superabsorbent material particles or fibers intermixed with the plurality of water-insoluble fibers" is supported by the original disclosure, and is not new matter.

Claim Rejections - 35 U.S.C. §102

The rejection of Claims 1, 5-11, 13-23, 27, 28, 30, 31, 35, 35, 38, 39, 43, 44, 46, 47, 51, 52, and 54 under 35 U.S.C. §102(a) as anticipated by Chen et al., U.S. Patent 6,261,679, is respectfully traversed.

Independent Claims 1, 23, 31, and 39 recite a plurality of water-insoluble fibers and a plurality of superabsorbent material particles or fibers intermixed with the plurality of water-insoluble fibers. Applicants reiterate that the Chen et al. Patent does not disclose an absorbent composite with superabsorbent material particles or superabsorbent material fibers within the fibrous absorbent structure, and with Applicants' recited intake rate or liquid lock-up fraction, and therefore does not anticipate Applicants' claimed invention.

KCC-2137-CIP1-DIV

7

MDS/I

Serial No.: 10/675,412

Docket No.: KCC-16,247.3

The Office Action points to Col. 7, line 66, through Col. 8, line 2 and Col. 28, lines 27-37, for teaching superabsorbent particles or fibers intermixed with a plurality of water-insoluble fibers. Regarding Col. 7, lines 66, through Col. 8, line 2, Applicants understand this to be related to the water-insoluble fibers, as the "polyethylene, polypropylene, and other synthetic fibers" are certainly not superabsorbent materials.

The fibrous foam structure of the Chen et al. Patent does include water-insoluble fibers, but there is no plurality of superabsorbent particles or fibers intermixed with the fibers of the Chen et al. Patent, and thus the fibrous foam structure would not have or be expected to provide Applicants' recited intake rate and lock-up fraction.

The Office Action points to Col. 28, lines 27-37, of the Chen et al. Patent for disclosing an intermixed superabsorbent material. The paragraph at Col. 28, lines 22-37, of Chen et al. states in full:

A continuous web of an absorbent fibrous structure can be molded, shaped or cut into desired shapes for use in absorbent articles. Cutting of the embryonic, semi-cured, or cured absorbent fibrous structure can be done with hydraulic jets, air knives, dies and stamps, metal blades or saws, lasers, and the like. *The absorbent fibrous structure can be laminated, joined to, or coupled with elastomeric films or threads, plastic films including apertured films, nonwoven webs such as spunbond or meltblown layers, airlaid materials, creped or uncreped tissue webs, coform composite material, superabsorbent materials and fibers, biodegradable webs,*

KCC-2137-CIP1-DIV

8

MDS/I

Serial No.: 10/675,412

Docket No.: KCC-16,247.3

laminated structures, other foam layers, including open cell and closed cell foams and reticulated open cell webs, textiles such as cotton webs, fluff pulp mats, activated carbon materials, and the like, using methods known for high-speed assembly of absorbent articles. (emphasis added).

Laminating, joining to, or coupling the already formed absorbent fibrous foam structure (which has no plurality of intermixed superabsorbent particles or fibers) of the Chen et al. Patent to other materials, even the listed superabsorbent materials and fibers, would not result in a fibrous absorbent composite with superabsorbent particles or fibers intermixed with the plurality of fibers, and having the recited intake rate and liquid lock-up fraction of Applicants' claimed invention.

It is not reasonable to assume that the superabsorbent materials "laminated, joined to, or coupled with" the formed absorbent fibrous structure of the Chen et al. Patent would be structurally similar to, or have the recited properties of, Applicants' claimed invention. One skilled in the art reading this portion of the Chen et al. Patent would understand that the superabsorbent material is being "laminated, joined to, or coupled with" the surface of the already formed absorbent fibrous foam structure. The Chen et al. Patent is not disclosing a fibrous foam structure of intermixed superabsorbent particles or fibers.

As the absorbent fibrous foam material of the Chen et al. Patent does not include superabsorbent material particles or fibers intermixed with the fibers, the

KCC-2137-CIP1-DIV

9

MDS/I

Serial No.: 10/675,412

Docket No.: KCC-16,247.3

fibrous absorbent foam of the Chen et al. Patent would not inherently have or be expected to have Applicants' recited intake rate and liquid lock-up fraction. Structural differences between Applicants' intermixed superabsorbent material and the surface only applied superabsorbent material at Col. 28, lines 27-37, of the Chen et al. Patent would not inherently provide similar liquid absorbency characteristics. It is not reasonable to assume that the material of the Chen et al. Patent would inherently have Applicants' recited intake rate and liquid lock-up fraction due to differences in forming processes and/or final composite structure.

For at least the above reasons, the Chen et al. Patent does not anticipate Applicants' invention of Claims 1, 23, 31, and 39. Claims 5-11, 13-22, 27, 28, 30, 35, 36, 38, 43, 44, 46, 47, 51, 52, and 54 depend from Claims 1, 23, 31, and 39, respectfully, and are thus patentable for at least the same reasons. Reconsideration and withdrawal of this rejection are respectfully requested.

Claim Rejections - 35 U.S.C. §103

The rejection of Claims 2-4, 12, 24-26, 29, 32-34, 37, 40-42, 45, 48-50, and 53 under 35 U.S.C. §103(a) as being unpatentable over Chen et al., U.S. Patent No. 6,261,679, is respectfully traversed. Claims 2-4, 12, 24-26, 29, 32-34, 37, 40-42,

KCC-2137-CIP1-DIV

10

MDS/I

Serial No.: 10/675,412

Docket No.: KCC-16,247.3

45, 48-50, and 53 depend from Claims 1, 23, 31, and 39, respectfully, and are thus patentable for at least the same reasons presented above.

As discussed above, the fibrous foam material of the Chen et al. Patent differs from Applicants' claimed composite in both final structure and forming process. One skilled in the art following Chen et al., would not find disclosure on how to obtain Applicants' recited intake rate and liquid lock-up fraction, particularly as there is no disclosure in Chen et al. of intermixing superabsorbent particles or fibers in the fiber matrix, or of how to add fast-absorbing superabsorbent particles or fibers in a wet forming process.

Furthermore, simply modifying the amount of superabsorbent would not be expected to eventually provide the claimed composite, as the superabsorbent material is still not intermixed in the fiber matrix. The Office Action takes quite a narrow and incorrect view by assuming that similar starting materials inherently leads to similar and adjustable properties. The final structure² and the properties of an absorbent composite are greatly influenced by the forming process. While Applicants describe forming processes that differ from the foaming processes of the Chen et al. Patent (e.g., Applicants apply superabsorbent particles or fibers to the water-insoluble

² The differences between final structures of fibrous absorbent composites can be difficult to express in proper claim language, thus absorbent composites are sometimes claimed according to recited characteristics such as intake rate or liquid lock-up fraction.

Serial No.: 10/675,412

Docket No.: KCC-16,247.3

fibers in the presence of a liquid), Applicants' claimed invention also has a structural difference from the Chen et al. Patent that is reflected in the claims, i.e., the intermixed superabsorbent particles.

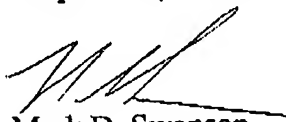
Favorable reconsideration and withdrawal of all rejections are respectfully requested.

Conclusion

Applicants intend to be fully responsive to the outstanding Office Action. If the Examiner detects any issue which the Examiner believes Applicants have not resolved in this response, Applicants' undersigned attorney requests a telephone interview with the Examiner.

Applicants sincerely believe that this Patent Application is now in condition for allowance and, thus, respectfully request early allowance.

Respectfully submitted,



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KCC-2137-CIP1-DIV

12

MDS/I